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# **U.S. House of Representatives**

## **COMMITTEE ON VETERANS' AFFAIRS**

ONE HUNDRED EIGHTH CONGRESS

335 CANNON HOUSE OFFICE BUILDING

WASHINGTON, DC 20515

<http://veterans.house.gov>

## **VETERANS BENEFITS IMPROVEMENT ACT OF 2004**

### **S. 2486, AS AMENDED**

**TITLE: To amend title 38, United States Code, to improve and enhance education, housing, employment, medical, and other benefits for veterans and to improve and extend certain authorities relating to the administration or benefits for veterans, and for other purposes.**

**S. 2486, as amended, would:**

#### **TITLE I—VETERANS EARN AND LEARN ACT**

1. Modify VA on-job training and apprenticeship benefit entitlement rates under the Vietnam-era and survivors' and dependents' programs to be consistent with the entitlement rates for the Montgomery GI Bill-Active Duty and Selected Reserve programs and the Post-Vietnam Era Veterans' Educational Assistance Program. The modification would charge benefits entitlement usage based on "dollars used" rather than "time spent" in training, to help the trainee conserve entitlement. This provision would take effect as of October 1, 2005.
2. Increase by 10 percent the percentage of the full-time VA monthly educational assistance allowance payable to individuals pursuing a full-time apprenticeship or on-job training program. For the first six months of training, the percentage of the monthly benefit would increase from 75 percent to 85 percent; for the second six months of training, from 55 percent to 65 percent; and for subsequent months, from 35 percent to 45 percent. These percentage increases would apply to the Montgomery GI Bill Active Duty and Selected Reserve programs, the Post-Vietnam Era Veterans' Educational Assistance program, and the Survivors' and Dependents' Educational Assistance program. This provision would take effect from October 1, 2005 through December 31, 2007.
3. Authorize VA to pay benefits for competency-based apprenticeships, in addition to time-based apprenticeships, and require State approving agencies to consider the recommendation of the Secretary of Labor regarding the approximate term and standards for such registered apprenticeship programs. Competency-based apprenticeships are completed upon demonstration of mastery of job skills rather than a set time period.
4. Extend eligibility for Survivors' and Dependents' Educational Assistance from 10 years to 20 years for a surviving spouse of any person who died on active duty.
5. Authorize VA to provide educational assistance benefits to reimburse eligible beneficiaries for the cost of certain national tests required for admission to institutions of higher learning or graduate schools, and for national tests that can qualify veterans for receipt of college credit.
6. Require coordination of information among the Departments of Veterans Affairs, Defense, and Labor with respect to on-job training or registered apprenticeships pursued by servicemembers while serving in the military and their receipt of appropriate credit for such training in civilian training programs.
7. Provide the Secretary of Veterans Affairs the discretion to establish a pilot program that furnishes on-job training benefits under VA educational assistance programs to claims adjudicators training in its disability compensation, dependency and indemnity compensation, and pension programs.

8. Permit the Secretary of Defense (or, in cases involving the activation of Coast Guard personnel, the Secretary of Homeland Security) to collect an activated Selected Reserve member's \$1,200 payment for use of Active Duty Montgomery GI Bill educational assistance benefits under Chapter 30 of title 38, United States Code, not later than 1 year after completion of 2 consecutive years of active duty.

## **TITLE II—EMPLOYMENT MATTERS**

### **Subtitle A—Employment and Reemployment Rights**

1. Increase from 18 months to 24 months the maximum period of employer-sponsored health coverage that an employee covered by USERRA may elect to continue, beginning with the date the absence from the position of employment begins; and providing that the effective date of the increased coverage would be the date of enactment.
2. Reinstate the requirement for comprehensive annual reports from the Secretary of Labor to Congress on the disposition of cases filed under USERRA; such reports would begin no later than February 1, 2005.
3. Require employers to provide notice to employees of the rights, benefits and obligations of employers and employees that apply under USERRA, and require the Department of Labor to make available to employers the text of the notice to be provided within 90 days after date of enactment.
4. Establish a demonstration project for the referral of federal employee complaints under USERRA to the Office of Special Counsel for investigation and resolution, and require the Secretary of Labor and the Office of Special Counsel to carry out the demonstration project. The Comptroller General is required to evaluate and report on the project.

### **Subtitle B—Other Matters**

5. Direct the Secretary of Veterans Affairs to contract for a report on placement, retention, and advancement of recently separated servicemembers in private sector employment for the purpose of determining ways to improve their employment opportunities.

## **TITLE III—BENEFITS MATTERS**

1. Provide an additional \$250 in dependency and indemnity compensation (DIC) paid monthly to the surviving spouse with one or more children below the age of 18. The additional benefit would be paid for months occurring during the 2-year period beginning on the date on which entitlement for DIC commenced.
2. Permit a radiation-exposed veteran who received payment under the Radiation Exposure Compensation Act (RECA), administered by the Department of Justice, to be eligible for VA compensation. A survivor who received a payment under RECA would be entitled to dependency and indemnity compensation (DIC). VA compensation and DIC would be reduced by any amounts received under RECA.
3. Exclude life insurance proceeds paid upon the death of a veteran from consideration as income for death pension benefits.
4. Provide specially adapted automobile and adaptive equipment benefits to veterans who are injured in a VA hospital due to negligence, carelessness, or similar reasons, and to veterans who are injured because of VA-sponsored rehabilitation or training, and specify that such veterans are eligible for specially adapted housing grants.
5. Make an award of death pension effective the first day of the month in which the death occurred if the claim is received within one year from the date of the veteran's death.
6. Codify VA regulations establishing cancer of the bone, brain, colon, lung and ovary as diseases for which a presumption of service connection is made for a veteran exposed to ionizing radiation. In addition, specify that the definition of "radiation-risk activity" includes service in a capacity that, if performed as an employee of the Department of Energy, would qualify the individual for the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. § 7384 et. seq.).

7. Codify the current dollar amounts of disability compensation and dependency and indemnity compensation provided for in Public Law 108-147.

#### **TITLE IV—HOUSING MATTERS**

1. Extend eligibility for specially adapted housing grants to veterans with permanent and total service-connected disabilities due to the loss, or loss of use, of both arms at or above the elbows.
2. Allow volunteers to provide services in connection with the construction, alteration, or repair of multi-family transitional housing. Permit commercial activities other than neighborhood retail services and job training programs to be performed by a multi-family transitional housing project.
3. Increase the maximum VA home loan guaranty to 25 percent of the Freddie Mac conforming loan amount for a single family residence and annually index the maximum amount of VA's home loan guaranty for construction or purchase of a home to the Freddie Mac limit. In 2004, the increase is expected to raise from \$240,000 to \$333,700 the maximum amount for a home loan guaranteed by VA.
4. Reinstate the program of VA-guarantees for adjustable rate mortgages (ARMs) through fiscal year 2008. The program expired at the end of fiscal year 1995.
5. Extend the authority of VA to guaranty hybrid adjustable rate mortgage loans through fiscal year 2008, and make additional improvements to the program. This program is set to expire at the end of fiscal year 2005. A hybrid ARM offers lower interest rates (like most adjustable rate loans) after a fixed payment for a longer period of time than most traditional ARMs.
6. Terminate the collection of home loan fees from veterans rated eligible for compensation at pre-discharge rating examinations.
7. Extend the Native American Home Loan program through December 31, 2008.

#### **TITLE V—MATTERS RELATING TO FIDUCIARIES**

1. Define a fiduciary as a guardian, curator, conservator, committee or person legally vested with the responsibility or care of a claimant (or the estate) or of a beneficiary (or the beneficiary's estate), or any other person appointed in a representative capacity to receive money paid by VA.
2. Require VA to conduct an inquiry or investigation as to the fitness of a fiduciary, prior to certification. Such inquiry or investigation would include, to the extent practicable, a face-to-face interview, a copy of a credit report within one year of appointment, in addition to the furnishing of any bond that may be required by the Secretary.
3. Require the Secretary, as a part of the inquiry or investigation, to request information about whether the potential fiduciary has been convicted of any offense under Federal or State law.
4. Permit a less rigorous inquiry or investigation of the parent of a minor beneficiary; spouse or parent of an incompetent beneficiary; person appointed by a court of competent jurisdiction; or appointed to manage an estate where the annual amount of veterans' benefits to be managed does not exceed \$3,600.
5. Give the Secretary the authority to appoint a temporary fiduciary for a period not to exceed 120 days, if needed to protect the assets of the beneficiary when a determination of incompetence is being made or appealed, or a fiduciary is appealing a determination of misuse.
6. Prohibit the Secretary from continuing the temporary fiduciary beyond 120 days if a final decision has not been made on the competence of the beneficiary or fiduciary, unless the Secretary has obtained a court order for a guardian, conservator or similar legal fiduciary.
7. Prohibit a fiduciary from collecting a fee from the beneficiary for any month when the Secretary or a court has determined the fiduciary has misused some or all of the veterans' benefits.
8. Require the Secretary to repay misused benefits if the misuse is due to the Secretary's failure to investigate or monitor a fiduciary; when the fiduciary is not an individual; or is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries.

9. Require the Secretary to conduct periodic on-site reviews of any person or agency located in the United States that serves as a fiduciary to more than 20 beneficiaries and the total annual amount of benefits exceeds \$50,000.
10. Authorize the Secretary to require a fiduciary to personally appear at a VA regional office to receive payments.
11. Authorize federal courts to issue judicial orders of restitution when sentencing a fiduciary who is a defendant in a criminal matter arising from the misuse of benefits.
12. Require the Secretary to include in annual reports information on the fiduciary program including the number of beneficiaries, the types of benefits being paid, the number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused, and other information concerning actions taken in cases of misuse.

#### **TITLE IV—MEMORIAL AFFAIRS MATTERS**

1. Designate a memorial currently under construction at the Riverside National Cemetery in Riverside, California, as: Prisoner of War/Missing in Action National Memorial.
2. Authorize the Secretary of Veterans Affairs to lease any undeveloped land and unused or underutilized buildings belonging to the United States and part of the National Cemetery Administration (NCA). The term of any lease would be limited to 10 years. Proceeds from the lease of land or buildings and proceeds from agricultural licenses of NCA lands would be deposited in a National Cemetery Administration Facilities Operation Fund. Fund proceeds would be available to cover costs incurred by NCA in the operation and maintenance of national cemeteries.
3. Expand the authority of the Secretary of Veterans Affairs to acquire additional lands for national cemeteries by exchanges of existing land.

#### **TITLE VII—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)**

1. Add to the definitions in the general provisions of SCRA that the term “judgment” would mean “any judgment, decree, order or ruling, final or temporary.”
2. Clarify that waivers by servicemembers of rights and protections under SCRA must be in writing and must be executed in a separate instrument; and require that certain written waivers must be in at least 12-point type.
3. Provide that plaintiffs as well as defendants may under SCRA request stays of civil proceedings.
4. Clarify that dependents as well as servicemembers are covered by SCRA’s residential and motor vehicle lease termination provisions on joint leases.
5. Provide that SCRA’s lease termination provisions also apply when the servicemember residing in a State outside the continental United States receives permanent change of station orders to any location outside that State, for example, from Hawaii or Alaska to the 48 contiguous States or a foreign country.
6. Define for the purposes of SCRA’s lease termination provisions that the term “military orders” would mean with respect to a servicemember, “official military orders, or any notification, certification, or verification from the servicemember’s commanding officer, with respect to the servicemember’s current or future military duty status.”
7. Define for the purposes of SCRA’s lease termination provisions that the term “continental United States” would mean “the 48 contiguous States and the District of Columbia.”
8. Clarify that SCRA’s lease termination provisions also cover individual deployments, as well as military unit deployments.

#### **TITLE VIII—OTHER MATTERS**

1. Authorize the principal office of the United States Court of Appeals for Veterans Claims to be located at any location in the Washington, D.C., metropolitan area, rather than only in the District of Columbia.

2. Extend the requirement for the Advisory Committee on Former Prisoners of War to report to the Secretary of Veterans Affairs through 2009.
3. Provide a veteran separated from the Armed Forces under honorable conditions after 3 years or more of active service with administrative and judicial redress for alleged violations of his or her rights under section 3304(f)(1) of title 5, United States Code, which grants veterans preference to compete for vacant positions in the Federal government.
4. Direct the Secretary of Veterans Affairs to submit a report to Congress, not later than 1 year after date of enactment of this Act, detailing the Department's outreach efforts to make veterans and servicemembers aware of VA benefits and services to which they may be entitled.

**EFFECTIVE DATE: Date of enactment except the following sections:**

Sec. 102: Shall apply with respect to months beginning after September 30, 2005.

Sec. 103: Shall apply with respect to months beginning on or after October 1, 2005, and before January 1, 2008.

Sec. 202: The Secretary of Labor shall submit a report no later than February 1, 2005, and annually thereafter.

Sec. 203: Not later than the date that is 90 days after the date of enactment, the Secretary of Labor shall make available to employers the notice required under section 4334 of title 38, United States Code.

Sec. 204: The demonstration project shall be carried out during the period beginning on the date that is 60 days after the date of enactment and ending on September 30, 2007.

Sec. 211: Not later than 180 days after the date of enactment, the Secretary of Veterans Affairs shall enter into a contract.

Sec. 301: Shall take effect with respect to payments for the first month beginning after the date of the enactment of this Act.

Sec. 302: Paragraph (4) of section 1112(c) of title 38, United States Code, as added by subsection (a), shall take effect with respect to compensation payments for months beginning after March 26, 2002. Subsection (c) of 1310 of such title, as added by subsection (b), shall take effect with respect to dependency and indemnity compensation payments for months beginning after March 26, 2002.

Sec. 306: Shall take effect as of March 26, 2002.

Sec. 405: Shall not be construed to affect the force or validity of any guarantee of hybrid adjustable rate mortgages under section 3707A of title 38, USC, as in effect on the day before the date of the enactment of this Act.

Sec. 507(a): Except as otherwise provided, this title and the amendments made by this title shall take effect on the first day of the seventh month beginning after the date of enactment.

Sec. 802: December 27, 2001.

Sec. 805: Not later than one year after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit the report to Congress.

**LEGISLATIVE HISTORY:**

June 1, 2004: Referred to the Senate Committee on Veterans' Affairs.

June 6, 2004: Senate Committee on Veterans' Affairs hearing.

July 20, 2004: Senate Committee on Veterans' Affairs ordered reported favorably with amendments.

Sep. 20, 2004: Senate Committee on Veterans' Affairs reported with an amendment in the nature of a substitute and an amendment to the Title, with written report number 108-352.

Oct. 8, 2004: Passed the Senate with an amendment and an amendment to the Title by unanimous consent. (Note: consists of certain provisions from S. 1132, S. 2485, H.R. 1716, H.R. 3936, H.R. 4175, H.R. 4345 and H.R. 4658.)

Oct. 9, 2004: Referred to the House Committee on Veterans' Affairs.